



**IN THE DISTRICT COURT OF THE UNITED STATES  
FOR THE WESTERN DISTRICT OF NORTH CAROLINA  
ASHEVILLE DIVISION**

**RAMSEY GROUP INC.,**  
a North Carolina corporation,

Plaintiff,

v.

**EGS INTERNATIONAL, INC.**  
d/b/a **ENVIROGUARD,**  
**DOUGLAS FRAZIER,**  
an individual,  
**KENNETH COTTON,**  
an individual, and  
**EXPO POWER SYSTEMS, INC.,**  
a California corporation.

Defendants.

Civ. A. No. 1:02CV77

**AFFIDAVIT OF HOWARD J. KUSTER, JR.**

I, Howard J. Kuster, Jr., having been duly sworn, state the following under penalty of perjury:

1. I am 58 years old. I have sufficient capacity to testify regarding matters within my personal knowledge. I have been a resident of Goldston, North Carolina since 1985. I served as a mechanic in the United States Army from 1966 to 1969, during which time I repaired and maintained ground vehicles, including tanks, bulldozers, and earth movers. Since retiring from the Army, I have worked and/or owned and operated businesses in a variety of technical fields, including roofing, air compression, and scuba diving. Currently, I provide consulting services relative to a wide variety of mechanical technologies.

**BEST AVAILABLE COPY**

2. In 1969, after retiring from the Army, I met Kenneth Cotton ("Cotton"), a defendant in this action, who trained me for scuba diving certification and scuba diving instructor certification. Cotton and I have kept in touch with one another since then.

3. Being aware of my mechanical background, Cotton contacted me in December 1998 or January 1999 to discuss the possibility of forming a first response team for battery acid spills and other battery-related accidents. At the time, Cotton was an officer in Expo Power Systems, Inc., another defendant in this action. Expo Power Systems, Inc. was operating a spill containment business under the name "Enviroguard," and it was with regard to Enviroguard that Cotton sought my assistance. I told Cotton that a first response team for battery-related accidents would be too complicated and expensive to form and operate. Cotton then asked how I would design a spill containment system that would comply with a new law regarding spill containment systems in industrial battery applications. Cotton told me that the law required the spill containment system to include a barrier 4 inches in height, and that Enviroguard was looking for an improved spill containment system design that did not require the use of epoxy floor coatings during spill containment system installation. I suggested to Cotton that Enviroguard should investigate using swimming pool technology for this application.

4. In April 1999, Cotton contacted me again, asking me to oversee an installation of a spill containment system designed by Enviroguard. The installation was to occur at a Federal Express facility in Sacramento, California. Shortly thereafter, I traveled by airplane to Sacramento to oversee the installation. A copy of my electronic plane ticket is attached hereto as Exhibit 1. When I arrived at the installation, I observed that the spill containment system provided by Enviroguard for the installation primarily consisted of a collection of rectangular barrier segments that attached to one another and to the floor and a sheet of single-sided, stick-

down roofing material that had to be inserted, with one side tacky, between the existing battery rack and the floor, and adhered to the floor. I actually performed the installation because the Enviroguard installer was unavailable. However, the Enviroguard system was difficult to install because the stones in the concrete floor impeded drilling and fastener insertion and the barrier was too rigid to conform to the irregular contours of the floor surface. I provided a sample of the excess barrier material from this installation to J. Derel Monteith, Jr. of the law firm of Carter Schnedler & Monteith, counsel for Ramsey Group, Inc., the plaintiff in this action.

5. After the Federal Express installation, while I was still in California, I conceived a new spill containment system design. My design included "L"-shaped and corner barrier segments with slots within the vertical and/or horizontal portions thereof to allow for adjustability of rails to avoid stone in the floor, to reduce rigidity of the barrier to enable conformity with the floor surface, and to enable use of bookbinder-type clips to secure a liner to the barrier.

6. Still while I was in California, I attended a meeting in the Enviroguard offices with Cotton, Douglas Frazier (a defendant in this action) ("Frazier"), Dave Auten, Eric Jones, all of whom were Enviroguard employees, and two or three additional Enviroguard employees whose names I cannot recall with certainty. At the meeting, I informed everyone attending the meeting that the design of the Enviroguard system installed at Federal Express was flawed in light of the problems discussed above with regard to rail rigidity and immovability and liner installation difficulty. I recommended that Enviroguard use a flexible liner made of swimming pool liner material. Frazier indicated that Enviroguard had investigated the pool liner material option and found that the material would not conform to Underwriters Laboratories specifications for an acidic environment. I then recommended using a flexible liner made of

heat-weldable, acid-proof roofing material. I indicated that I would provide Enviroguard with a list of suppliers of such material. Also at this meeting, I drew sketches of several versions of the "L"-shaped and corner barrier segments I had conceived shortly before. At Frazier's request, I revised and completed the sketches after the meeting. My revised and completed sketches included a pencil version which I did not provide to Enviroguard because it would not photocopy well, and an ink version that I did provide to Dave Auten of Enviroguard at Frazier's request. Copies of the pencil and ink versions of the revised and completed sketches are attached hereto as Exhibits 2 and 3, respectively. Frazier also requested that I provide Dave Auten with the list of roofing material suppliers after I completed it.

7. Also during my California visit, Frazier located a firm that performed sonic welding for type of in-floor water trough amusement commonly known as a "lazy river." Frazier and I visited the firm. During our visit, Frazier informed me that the spill containment system was going to be a profitable product for Enviroguard and that I would be handsomely rewarded for my contribution to and collaboration on the product. When Frazier and I returned to the Enviroguard offices, I contacted Stan Betts ("Betts"), a roofing and insulation installer located in New Jersey, to ask for the names and contact information of suppliers of heat-weldable roofing material. Betts gave me a list of such suppliers during our telephone conference. Betts also recommended a specific roofing material known as Elvaloy KEE. A copy of the notes I took during my conversation with Betts is attached hereto as Exhibit 4. To comply with Frazier's prior request, I provided the supplier list to Dave Auten of Enviroguard. In addition, an Enviroguard employee researched and generated a list of suppliers of Elvaloy KEE. A copy of the Elvaloy KEE supplier list is attached hereto as Exhibit 5. Shortly thereafter, I returned home to North Carolina.

8. Approximately one year after returning to North Carolina, Cotton contacted me to help train Enviroguard spill containment system installers as part of an installation training and certification program being formed by Enviroguard. At Cotton's request, I contacted Bob Leslie, a battery installer in Florida who was going to run the training and certification program. Bob Leslie sent me photographs of an Enviroguard spill containment system installation, which is when I first became aware that Enviroguard had adopted my design. Copies of the photographs are attached hereto as Exhibit 6. As I was under the impression that the system was still being refined, I did not demand payment for my contribution to and collaboration on the Enviroguard spill containment system at that time.

9. Approximately one year after my contact with Bob Leslie, Cotton contacted me again, this time to investigate an Enviroguard spill containment system that had failed a fire inspection because of leakage through the liner of the system. Soon thereafter, I returned to California and assisted with attempts to seal the liner to prevent leakage. I then returned back home to North Carolina.


10. During summer 2003, either Bob Leslie or Cotton told me that Enviroguard had obtained a patent on the spill containment system being sold by Enviroguard. I wrote Frazier at Enviroguard to inquire about the patent and to request to be named on the patent. A copy of my letter to Frazier is attached hereto as Exhibit 7. Frazier responded to my letter with a letter dated July 23, 2003, a copy of which is attached hereto as Exhibit 8. Harold Rubinstein of Enviroguard called me and offered me \$3,000 to end my involvement in the matter, which I refused. Not long thereafter, James G. Gatto ("Gatto"), an attorney for Enviroguard formerly with the law firm of Mintz Levin et al. and now with the law firm of Pillsbury Winthrop et al.,

called me and offered me \$5,000 for a quitclaim deed to my interest in the Enviroguard spill containment system, which I refused.

11. I later received a letter from Gatto dated December 4, 2003, asking about my contribution to and collaboration on the Enviroguard spill containment system. A copy of the December 4 letter from Gatto is attached hereto as Exhibit 9. I responded by sending Gatto a letter dated December 10, 2003, a copy of which is attached hereto as Exhibit 10. During this time, I had multiple telephone conversations with Gatto, Harold Rubinstein of Enviroguard, and another attorney for Enviroguard named Frank Merideth, of the Greenberg Traurig law firm. I repeatedly indicated in these conversations that I conceived important contributions to the Enviroguard spill containment system without being paid for my contributions beyond a nominal fee for my second trip to California. After these conversations, a period of inactivity regarding the Enviroguard situation ensued.

12. In September 2004, at Gatto's request, I sent Gatto a letter outlining my requirements for compensation for my contributions to and collaboration in the Enviroguard spill containment system. A copy of my letter to Gatto is attached hereto as Exhibit 11. Gatto indicated that he would have to consult with Enviroguard about the matter. I have not received a response as of yet.

DATE: September 22, 2004

  
Howard J. Kuster, Jr.

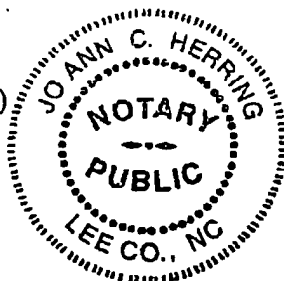
STATE OF NORTH CAROLINA  
COUNTY OF LEE

I hereby certify that Howard J. Kuster, Jr. appeared before me on the 22<sup>nd</sup> day of September, 2004, and after being duly sworn, signed the above Affidavit of Howard J. Kuster, Jr..

  
NOTARY PUBLIC

My commission expires: July 9, 2009

(NOTARIAL SEAL)



APR 20 99 04:02P

TC 909-931-1032

FROM UN TICKETLESS TUL 20APR99 1717EST 2435750K PAGE 1 OF 1

Attn: Dave Kuten

SOUTHWEST AIRLINES®  
TICKETLESS TRAVEL™  
1-800-435-9792

TRIP #1

NON TRANSFERABLE POSITIVE IDENTIFICATION REQUIRED.

Receipt and Itinerary as of 04/20/99 05:11PM

Confirmation Number: AUX775 ARC no: 05623133 Received:  
Confirmation Date: 04/20/99Passenger(s):  
CUSTER/HQUARD 526-2760937809-3

## Itinerary:

	Flt#	Date	Depart	Arrive
Los Angeles International/Sacramento	933 Y	26APR99	06:15AM	07:35AM
Sacramento/Los Angeles International	230 Y	26APR99	05:40PM	07:55PM

## Cost:

Total for 1 Passenger(s):	AIR:	15.12
	TAX:	16.88
	FFC:	6.00
Total Fare:		\$184.00

## Payment Summary:

Current payment(s):		184.00
20APR1999 VISA 4376940000054xx Ref 526-2760937809-3		
Total Payments:		\$184.00

## Fare Rule(s):

VALID ONLY ON SOUTHWEST AIRLINES

All travel involving funds from this Confirm no. must be completed by 04/20/00

## Fare Calculation:

ADT: 1 LAXUNSMF YL 07.00 SMFUNEAX YL 07.00 S:74.00 ZF4.00 XFLAX3 SMF3  
\$184.00

BOARDING PASS DISTRIBUTION AT GATE.

## CONDITIONS OF CONTRACT

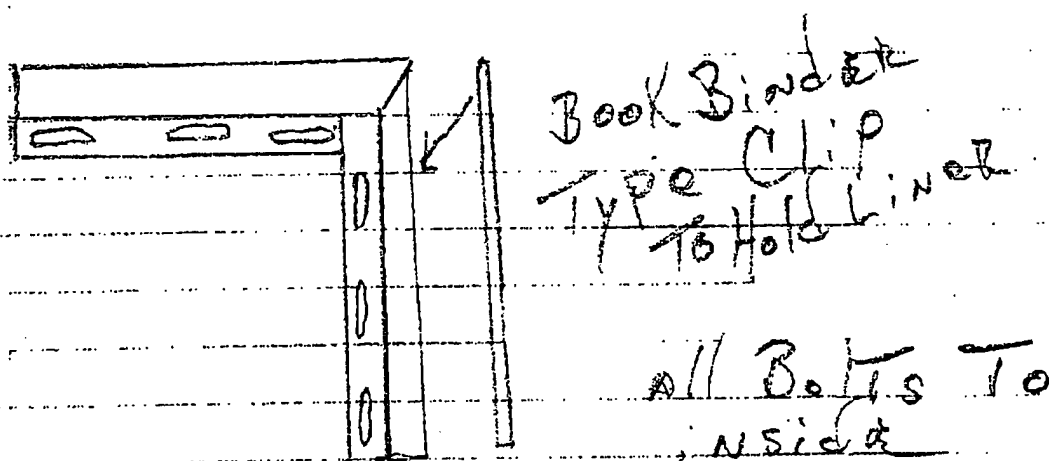
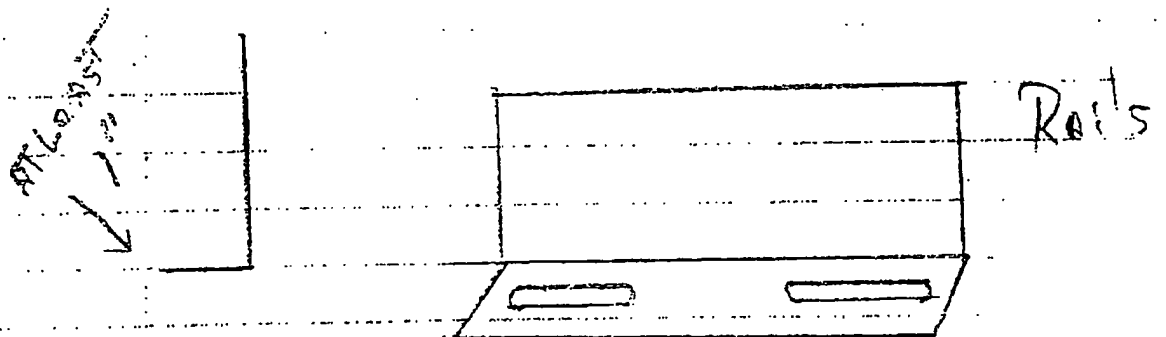
Southwest Airlines Co. - Notice of Incorporated Terms - This notice is part of the Conditions of Contract Air Transportation by Southwest Airlines is subject to Southwest Airlines' Passenger Contract of Carriage, the terms of which are herein incorporated by reference. Incorporated terms include, but are not restricted to: (1) Limits on liability for baggage, including fragile or delicate goods, and availability of excess valuation coverage. Baggage liability is limited to \$1250 per Customer unless you purchase excess valuation liability coverage. Exception: Carrier will not be responsible for money, jewelry, cameras, video and electronic equipment, including computers; silverware; negotiable papers; securities; business documents; cameras; and similar valuables contained in checked or un-checked baggage. (2) Claims restrictions, including time periods in which Customers must file a claim or sue Southwest. (3) Our rights to change terms of the Contract. (4) Rules on reservations, check-in times, refusal to carry, and smoking. (5) Our rights and limits of liability for delay or failure to perform service, including schedule changes, substitution of alternate air carriers or aircraft, and rebooking. (6) Airline flights may be overbooked. If we deny you boarding due to an overbook and you have checked in at the gate at least 10 minutes before scheduled departure, with few exceptions, we compensate you. (7) Southwest reserves the right to refuse carriage to any person who is not able to produce positive identification. You may inspect the Contract of Carriage at any Southwest ticket counter or obtain a copy by sending a request to: Southwest Airlines Co., Director of Customer Relations, PO Box 35647, Love Field, Dallas, Texas 75235-1847.

TEN-MINUTE RULE - Passengers who do not claim their reservations at the departure gate desk at least ten minutes prior to scheduled departure time will have their reserved space cancelled and will not be eligible for denied boarding compensation.

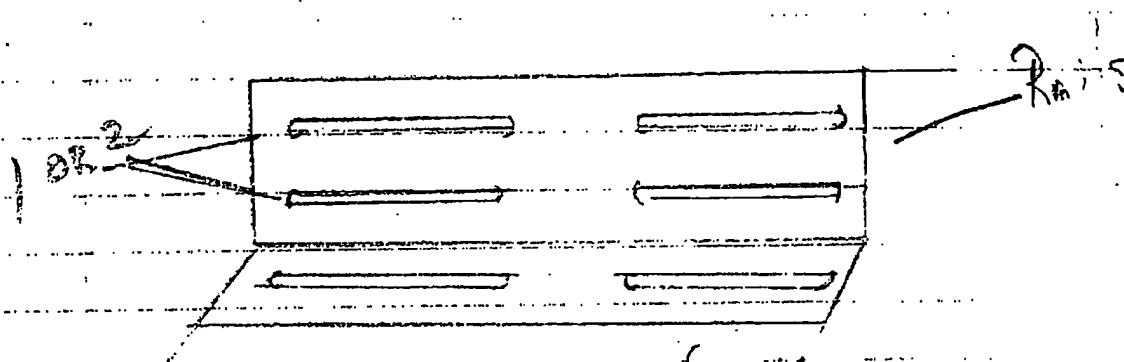
REFUNDS AND EXCHANGES - Any change to this itinerary may result in a fare increase. Unless otherwise noted, if you do not travel on the itinerary, you may qualify for a refund or exchange. To apply for a refund, please call 1-800-FLY-SWA. Written requests should include a copy of this document and be addressed to: Southwest Airlines Refunds Department 6RF PO Box 35647 Dallas, TX 75235-1847.



SKETCHES TO HAVE AS PER Doug



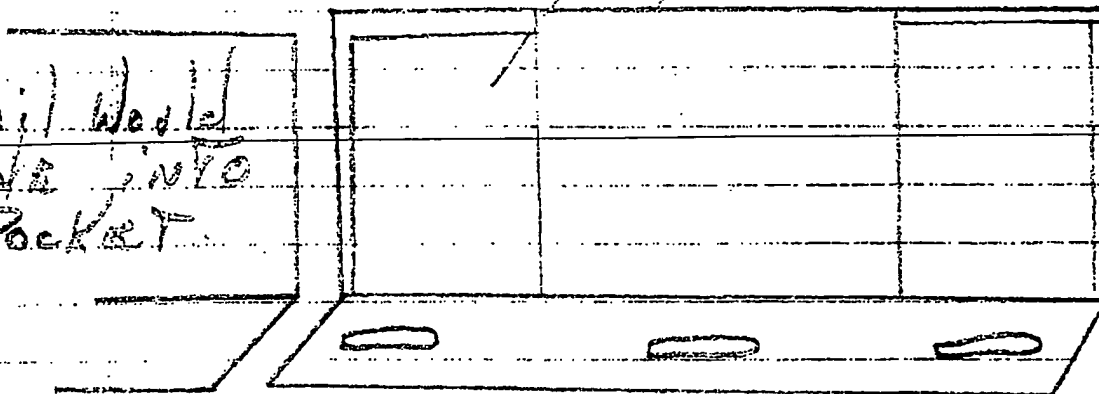
FOR EXTRA STRENGTH OR ADJUSTMENT



CORNERS COULD HAVE SOME SLOTS FOR MORE ADJUST.

4 - 20 BOLTS W/ 5/16 SLOTS

OR.

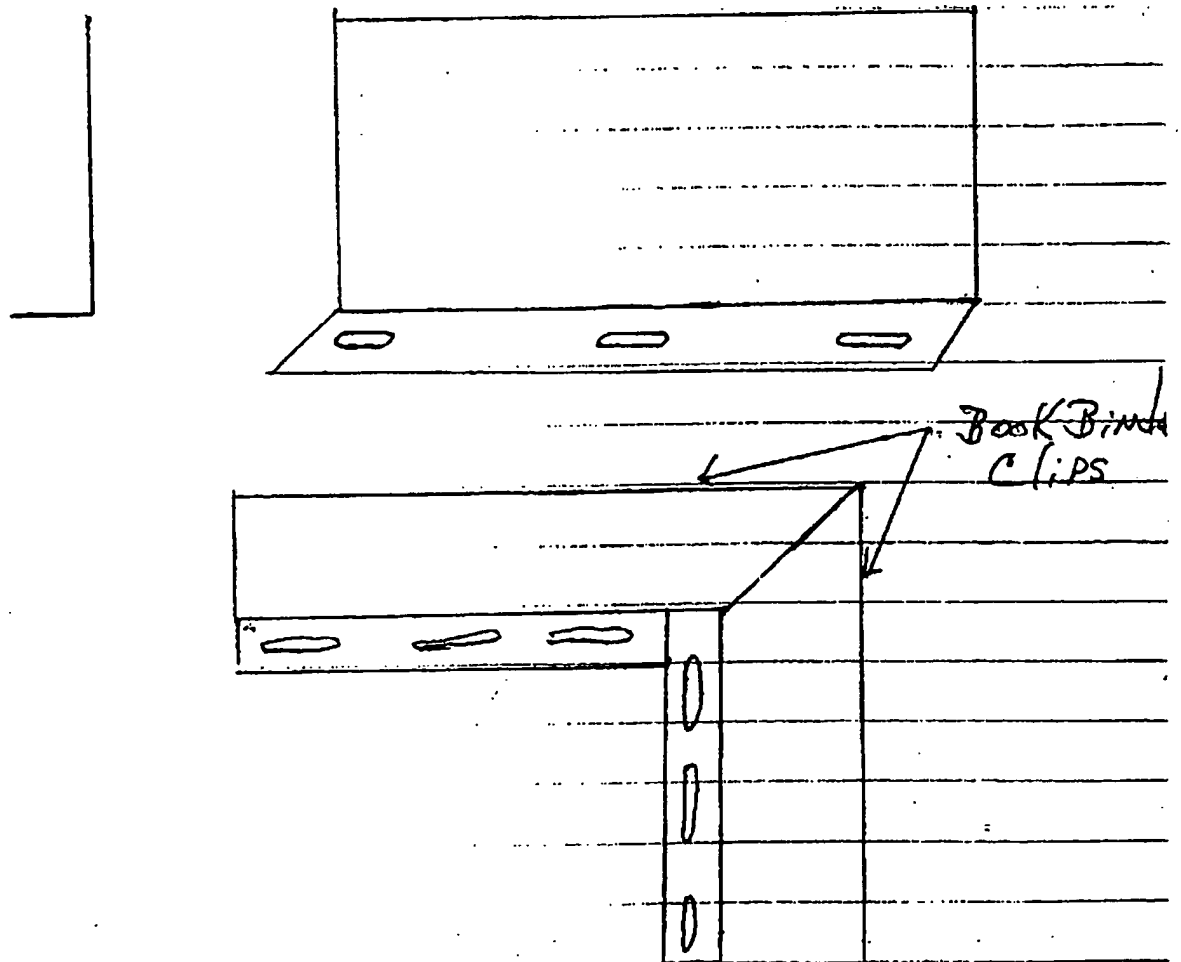
Hatched for  
DOORRail would  
Slide INTO  
Pocket

Rails OR/AND CORNERS could  
be Slotted INTERNALLY ON  
VERTICAL IN A Pocket Like  
MANNER - AND Book Binder  
Clips could still Be used.

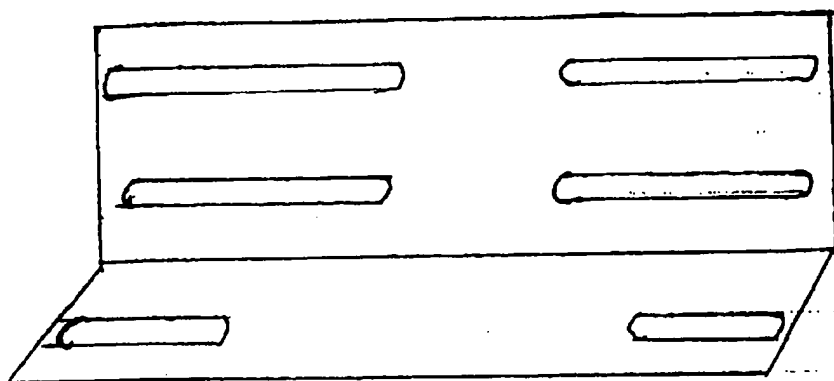
To: Dave Hutin

From Howard Kuster

As Per Doug's Request Here ARE  
my versions of walls To allow  
The use of The Book Binder  
clips. Also These designs allow  
more forgiveness in floor level.



OR FOR EXTRA STRENGTH -



Rails.

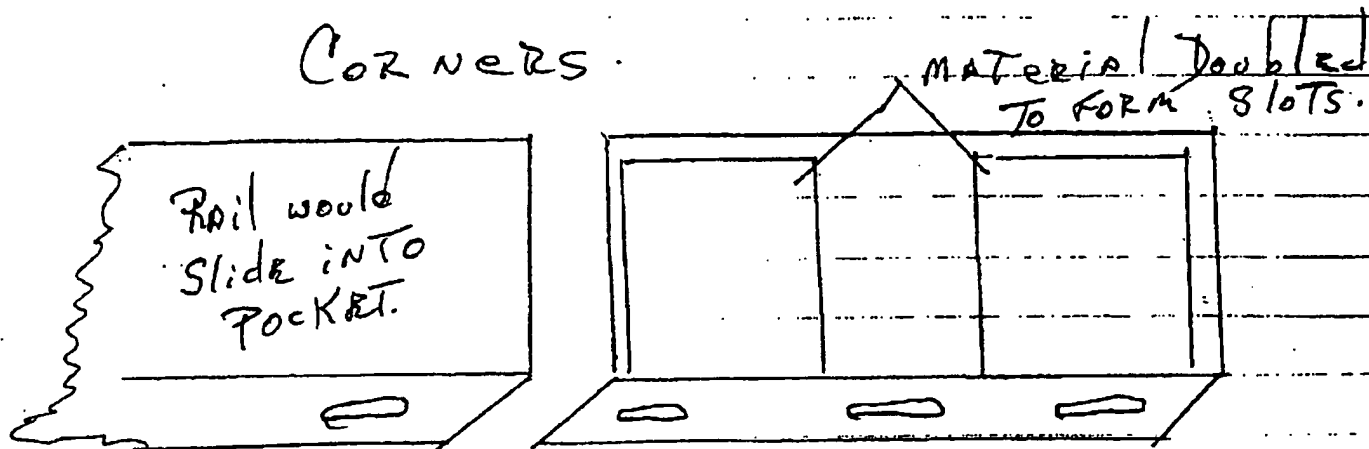
CORNERS COULD HAVE SIMILAR  
SLOTS FOR MORE ADJUSTMENT.

$\frac{1}{4}$  20 BOLTS  $\frac{5}{16}$  SLOTS.

FLATS & LOCKS -

OR POCKET RAILS AND/OR

CORNERS.



List of  
Linear Material

Firestone

800 - 428 4442

Fly Membrane Inter

1 800 969-0108

Cooler Engineer Membrane  
800 444 4023

HYLOAD INC

800 457 4056

Elvaloy KKK

Heat  
Weldable

Try Computer -

FMP  
305-321-0449

## ELVALOY® ROOFING SUPPLIERS

COOLEY ENGINEERED MEMBRANES, INC.  
P.O. BOX 939  
50 ESTEN AVE.  
PAWTUCKET, RI 02862-0939  
(800) 444-4023  
(401) 724-0490

CONTACT: STEPHEN SIENER

SEAMAN CORP.  
1000 VENTURE BLVD.  
WOOSTER, OH 44691  
(800) 927-8578  
(330) 262-1111

CONTACT: TERRY ANDERSON

HYLOAD, INC.  
9976 RITTMAN ROAD  
WADSWORTH, OH 44281  
(800) 457-4056  
(216) 334-5022

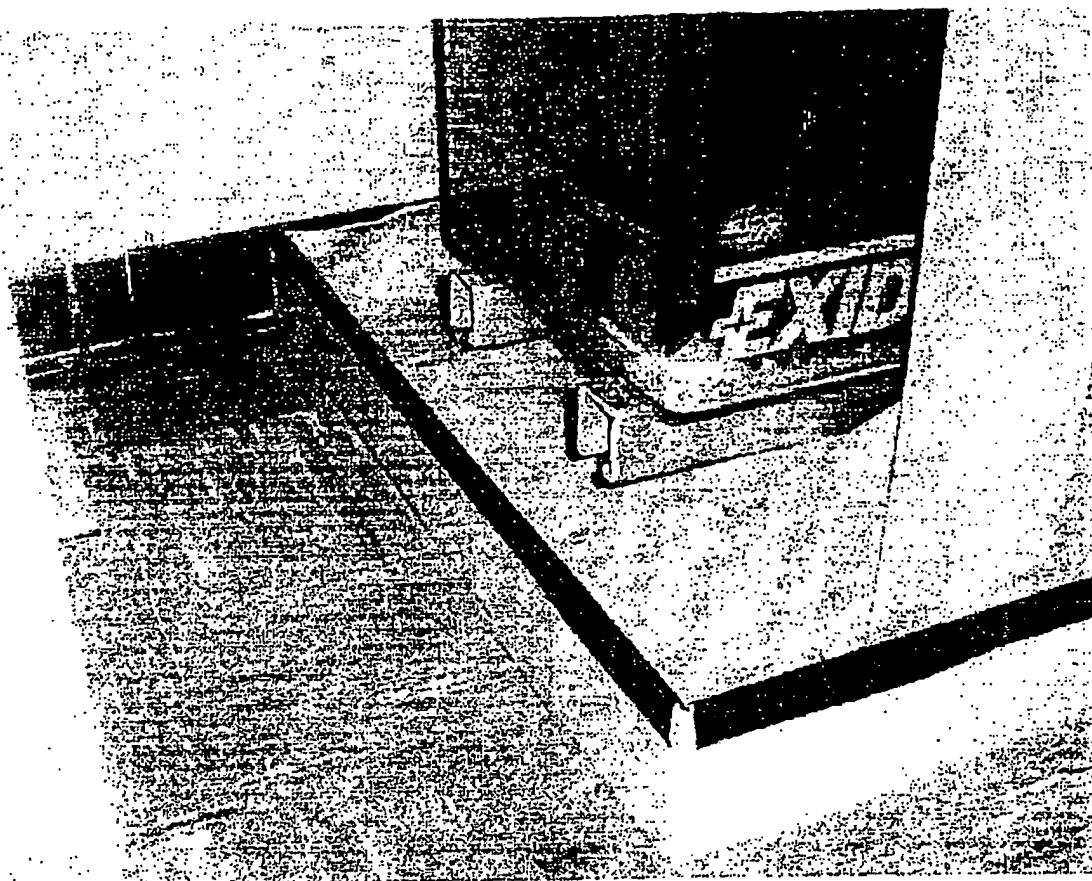
CONTACT: JOE NUSSBAUM

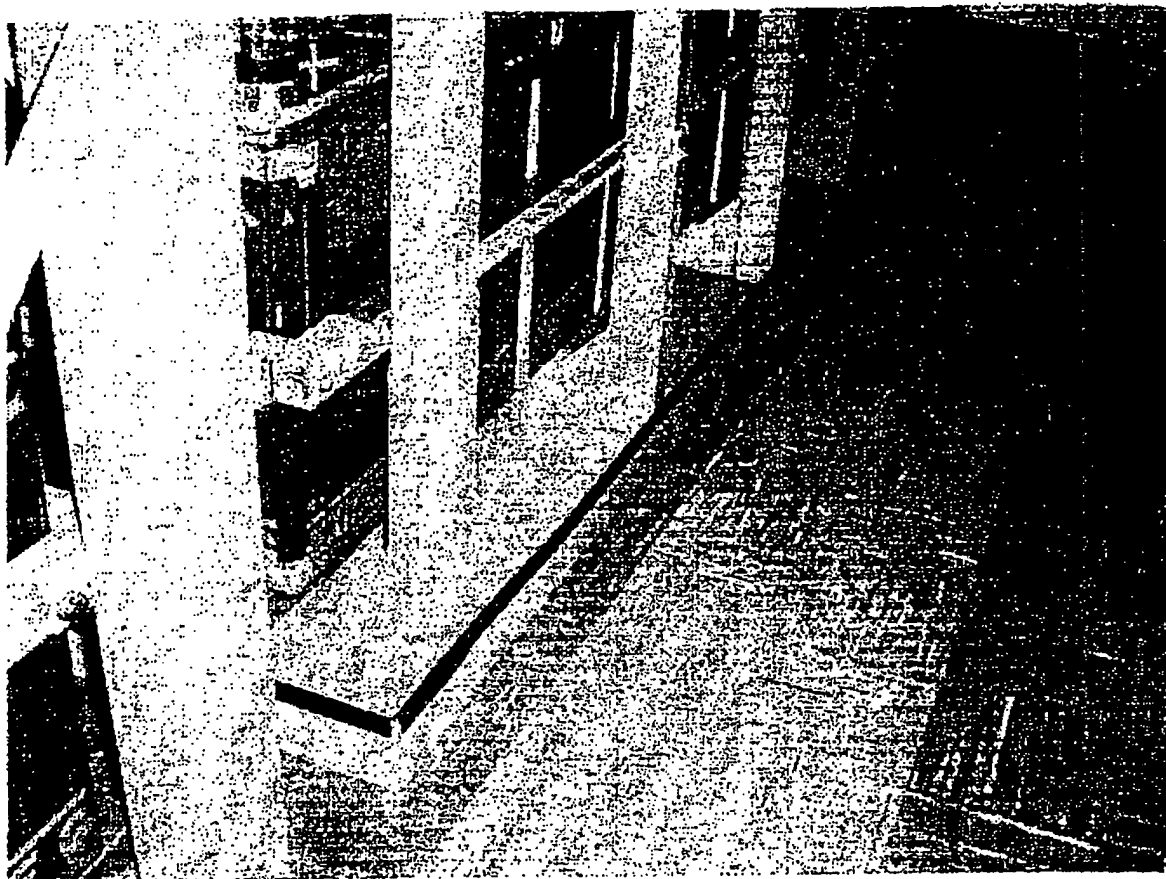
FIRESTONE  
525 CONGRESSIONAL BLVD.  
CARMEL, IN 46032  
(800) 428-4442  
(317) 575-7163

CONTACT: MARTY JOLLY

FLEX MEMBRANE INTERNATIONAL  
BETHLEHEM DRIVE  
MORGANTOWN, PA 19543  
(800) 969-0108  
(610) 286-7788

CONTACT: JOHN DOYLE







Dear Doug,

I spoke to a friend in Florida recently, and I have received some distressing news. The battery people down there seem to think that there is some kind of patent battle going on over the Enviroguard System. You did not inform me that we had a patent on the system.

As you are well aware, the original Enviroguard design involved stick down roofing and multi-pieced square-boxed walls. It was only after we collaborated and I recommended the "L" design walls, as the square boxes did not conform enough to the irregularities in the cement floors, and you and I went to the pool manufacturing company, where we viewed the sonic seaming procedure. It was soon after that, I contacted several friends in the commercial roofing industry and came up with a list of names of manufacturers that could supply us with a lining material suitable for use in an acid environment. I was also the individual who engineered, among other changes, the use of the bookbinder type clips for the top of the system.

I fail to see how there could be a patent for the Enviroguard System that does not bear my name. If this was some kind of an oversight, I am sure you will correct it. As you will recall, there were several others present when I made these design changes and worked on the system with you. If you deliberately omitted my name, from the patent, for your own reasons, I am confident that I can come up with an appropriate action in response. I await your immediate reply.

Sincerely yours,

Howard J. Kuster Jr.  
U.S. Army Retired

**ENVIROGUARD**  
COMPLIANCE AND SAFETY SOLUTIONS  
A DIVISION OF EGS INTERNATIONAL

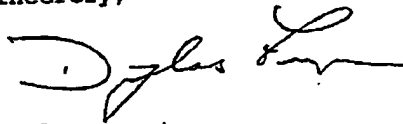
Howard J Kuster Jr.  
P.O Box 481  
Goldston, North Carolina 27252-0481

7/23/03

Dear Howard,

Thank you for your letter dated 7-21-03. Your assertions do not comport with our understanding of the factual history. If you have any documents that you believe relate to these issues and support your position, please send me a copy and we will review them. If we do not hear back from you with any documents, we will consider the matter closed.

Sincerely,



Douglas Frazier

**MINTZ LEVIN  
COHN FERRIS  
GLOVSKY AND  
POPEO PC**

*Boston  
Washington  
Reston  
New York  
New Haven  
Los Angeles  
London*

*12010 Sunset Hills Road  
Suite 900  
Reston, Virginia 20190-5839  
703 464 4800  
703 464 4895 fax  
www.mintz.com*

**James G. Gatto  
Member**

*Direct dial 703 464 8182  
jgatto@mintz.com*

December 4, 2003

Mr. Howard Keuster  
P.O. Box 481  
Goldston, North Carolina 27252

Dear Howard:

This is a follow up to our telephone conversations regarding your stated belief that you are an inventor of some of the features of the patents that we discussed. As we discussed, determining inventorship is a legal question that involves a number of factual inquiries. To enable us to make the legal assessment necessary, we need your input on the following factual matters. Please try your best to provide factual answers and not generalizations, opinions or conclusions.

1. When did you first start working with Expo or Enviroguard (hereafter collectively "Expo")?
2. When you first started working with Expo, what was the design of the lined containment system and which components were being used?
3. What, if any, *existing* ideas or components do you believe you suggested making changes to?
4. What if any new concepts did you first propose to Expo?
5. Please elaborate on the pool material that you indicated that Doug considered and took you to see and what if any problems you identified with that material?
6. I believe you indicated that Doug had the idea to use sonic welding of the corners? Please confirm if that is the case and identify any problems that you identified with sonic welding of the corners of the liner.

Mr. Howard Keuster  
December 4, 2003  
Page 2

7. Who had the idea to look at roofing material? What if any investigation did you do to find suitable materials.
8. Please identify the other people who you believe have knowledge of facts or documents relevant to these issues.
9. Please identify and provide us a copy of any documents that you have that relate to any of the above.
10. Do you have any physical specimens of any versions of the Expo system. If so, we would like to see them. Photos will be okay if you want to keep the actual specimens.
11. Please identify any other facts or documents that you believe may be relevant.

If you have any questions, please feel free to call me. I appreciate your help in this matter.

Very truly yours,

  
James G. Gatto

JGG/mrs

RES 106194v1



**Howard J. Kuster  
U.S. Army Retired**

**P.O. Box 481  
Goldston, NC 27252**



December 10, 2003

**MINTZ LEVIN  
COHEN FERRIS  
GLOVSKY AND  
POPEO PC**

**12010 Sunset Hills Road  
Suite 900  
Reston, Virginia 20190-5839**

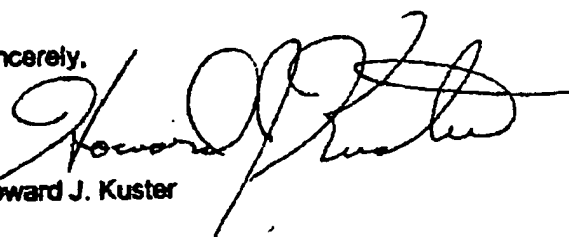
**Dear Mr. Gatto,**

I am in receipt of your letter of December 4, 2003. A review of that correspondence leads me to the conclusion that perhaps legal representation on my part should be obtained prior to fully responding to your questions. However, I will respond specifically to question, number 8. To wit: Ken Cotton at the time, a shareholder, principal, and officer of Expo Power Systems has complete knowledge of the relevant facts and can substantiate the role I played as a major contributor to the Enviroguard product line in general and the patented product in particular.

I believe you still represent Mr. Cotton. In the interest of saving both time and aggravation, I suggest you contact him to corroborate what you call "my claim" and to discuss any or all of these issues.

Thank you, for your interest in this matter.

Sincerely,



Howard J. Kuster

Cc: To File



**Howard J. Kuster**  
**U.S. Army Retired**

**P.O. Box 481**  
**Goldston, NC 27252**



Pillsbury, Winthrop, and Tyson

Attention Jim Gatto:

Dear Jim,

As per our conversation of September 14, 2004, my position is that Enviroguard owes me \$35,000 for the considerable work I did in creating what Doug Frazier calls "his patent". I also feel that I am entitled to at least 5% of all monies originating through sales of the products and parts of products throughout the world.

Although I am willing to give up my rights in this product I still feel that my name should appear on the patent.

In return for payment of the monies long overdue, and contract for my percentage I will release to you all rights to my creation. However, I have committed myself to responding to the other offer we spoke about within 48 hours. Please be kind enough to contact me ASAP.

Sincerely,

Howard J. Kuster

A handwritten signature in black ink, appearing to read "Howard J. Kuster", written over a horizontal line.

**This Page is Inserted by IFW Indexing and Scanning  
Operations and is not part of the Official Record**

**BEST AVAILABLE IMAGES**

Defective images within this document are accurate representations of the original documents submitted by the applicant.

Defects in the images include but are not limited to the items checked:

- ☐ BLACK BORDERS
- ☐ IMAGE CUT OFF AT TOP, BOTTOM OR SIDES
- ☐ FADED TEXT OR DRAWING
- ☐ BLURRED OR ILLEGIBLE TEXT OR DRAWING
- ☐ SKEWED/SLANTED IMAGES
- ☐ COLOR OR BLACK AND WHITE PHOTOGRAPHS
- ☐ GRAY SCALE DOCUMENTS
- ☒ LINES OR MARKS ON ORIGINAL DOCUMENT
- ☐ REFERENCE(S) OR EXHIBIT(S) SUBMITTED ARE POOR QUALITY
- ☐ OTHER: \_\_\_\_\_

**IMAGES ARE BEST AVAILABLE COPY.**

**As rescanning these documents will not correct the image problems checked, please do not report these problems to the IFW Image Problem Mailbox.**